

JUL 13 1976

MICHAEL ROSEN

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1975

**No. 75-1585**

**FOREST D. McGUIRE,**

*Petitioner,*

vs.

**UNITED STATES OF AMERICA,**

*Respondent.*

**On Petition For A Writ Of Certiorari To The United  
States Court Of Appeals For The Sixth Circuit**

**REPLY BRIEF FOR PETITIONER**

IRWIN L. FRAZIN  
JODY C. WEINER  
100 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 782-2131

*Attorneys for Petitioner  
Forest D. McGuire*

FRAZIN & FRAZIN, LTD.  
100 N. LaSalle Street  
Chicago, Illinois 60602  
*Of Counsel*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1975

---

**No. 75-1585**

---

**FOREST D. McGUIRE,**

*Petitioner,*

vs.

**UNITED STATES OF AMERICA,**

*Respondent.*

---

**On Petition For A Writ Of Certiorari To The United  
States Court Of Appeals For The Sixth Circuit**

---

**REPLY BRIEF FOR PETITIONER**

---

**OPINIONS BELOW**

---

The opinion of the Court of Appeals (Pet. App. 1a-3a)  
is not yet reported. The opinion of the District Court  
(Pet. App. 5a-10a) is not reported.

## JURISDICTION

---

The judgment of the Court of Appeals was entered on February 23, 1976. Petition for Rehearing was denied on March 30, 1976 (Pet. App. 4a). The petition for a writ of certiorari was filed on April 29, 1976. The Government's Brief in opposition was received on July 1, 1976. The jurisdiction of this Court is invoked under 28 USC 1254(i). Rule 19-1(b).

## STATEMENT

---

The purpose of Petitioner's Brief in Reply is to answer several contentions advanced by the Government in its brief in opposition. The facts of the instant matter, and all opinions below have been fully set forth in the Petition for a Writ of Certiorari filed in this Court on April 29, 1976.

## ARGUMENT

---

1. The Government first contends that petitioner has no standing to complain of the seizure of the currency which formed the basis of his conviction. Claiming that petitioner never asserted a possessory interest in the currency seized, the government contends that petitioner now has no right to attack the unlawful arrest which led directly to that seizure.

However, the Government cites the very authority which clearly establishes petitioner's standing to object to the lawfulness of his arrest. *Jones v. United States*, 362 U.S. 257, first established the broad principle that applies here:

The possession on the basis of which petitioner is to be and was convicted suffices to give him standing under any fair and rational conception of the requirements of Rule 41(e). 4 L.Ed. 2d 697, 703.

Additionally, *Simmons v. United States*, 390 U.S. 377, cited by the Government solidifies petitioner's right to contest the search and seizure. Although *Simmons* had been interpreted to limit the rule of automatic standing as set down in *Jones*, the facts of the instant case are not affected by the holding in *Simmons*.

The Defendants in *Simmons* were charged with a non-possessory offense (bank robbery) which necessitated testimony by the accused in order to establish the requisite standing. This dilemma of requiring an accused to forgo his Fifth Amendment right in order to assert his Fourth Amendment right, resulted in the Court's holding that any testimony given during a pre-trial motion to suppress which linked an accused to property seized could not be used against him directly if he took a contrary position at trial.

This situation does not obtain in petitioner's case. The very nature of the prosecution requires that the government prove a sufficient interest in the property by petitioner in order to convict him beyond a reasonable doubt.

Finally, this court held in *Simmons*, in addition to reaffirming the principle as set down in *Jones* involving possessory offenses, that:

. . . we held alternatively that the defendant need have no possessory interest in the searched premises in order to have standing. It is sufficient that he be legitimately on the premises when the search occurs. at 390.

Petitioner was arrested in the apartment, and forcibly brought to the Nashville Police Station where he was searched at least twice and questioned extensively. While the evidence was hotly disputed as to when, where and from whom the money was actually recovered, the Government alleged at trial and proved to the satisfaction of the trial judge, that the money was recovered at some point in time while Petitioner was in custody.

The Government has never denied that the money was seized as a direct result of petitioner's arrest. That being conceded, if the arrest was not based upon probable cause, petitioner has the right to request that all evidence seized be suppressed. *Brown v. Illinois*, 422 U.S. 590 (1975).

2. As the Government's Brief in opposition raises no new matters concerning petitioner's Due Process argument, petitioner will rely on the argument and authorities presented in the Petition for Certiorari previously filed.

## CONCLUSION

---

For the foregoing reasons, and the reasons previously presented, Petitioner respectfully prays that the Writ of Certiorari issue from this Honorable Court to the Sixth Circuit Court of Appeals to review that court's opinion in the instant case.

Respectfully submitted,

IRWIN L. FRAZIN  
JODY C. WEINER  
100 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 782-2131

*Attorneys for Petitioner  
Forest D. McGuire*

FRAZIN & FRAZIN, LTD.  
100 N. LaSalle Street  
Chicago, Illinois 60602  
*Of Counsel*